

Amendment No. 1 to HB0473

Marsh
Signature of Sponsor

AMEND Senate Bill No. 419*

House Bill No. 473

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 19, Part 2, is amended by adding the following as a new section:

(a)

(1) A marina has a lien on a floating cabin for any assessment levied against the floating cabin pursuant to a written lease or service contract between the marina and the owner of the floating cabin from the time the assessment becomes due, which lien may be enforced by judicial action.

(2) Notwithstanding subdivision (a)(1), a written lease or service contract between a marina and the owner of a floating cabin may provide that the marina's lien may be enforced in like manner as a security interest under title 47, chapter 9, if the marina gives notice of its action to the owner and to all lienholders of record.

(3) Notice shall be deemed sufficient if sent by United States mail, postage prepaid:

(A) If to the owner, at the address of the floating cabin, or, if different, the last address for the owner on file with the marina; or

(B) If to a lienholder, other interested party, or the nominee of record, at the address set forth in an instrument of record; or, if different, at such other address as the lienholder or other interested party may have on file with the marina.

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(4) Notice shall be deemed received three (3) days after deposit in the United States mail, postage prepaid. Fees, service charges, late charges, fines, and interest are enforceable as assessments under this section unless the written lease or service contract between the marina and the owner of the floating cabin provides otherwise. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due.

(b)

(1) A lien under this section is prior to all other liens and encumbrances on a floating cabin, except:

(A) Liens and encumbrances recorded before the date of the written lease or service contract between the marina and the owner of the floating cabin;

(B) A first or purchase money lien recorded before the date on which the assessment sought to be enforced became delinquent; and

(C) Liens for taxes and other governmental assessments or charges against the floating cabin.

(2) Upon a foreclosure action initiated by a lienholder or the marina under title 47 chapter 9, the marina is entitled to a priority in the proceeds from the foreclosure sale to satisfy the lien under subsection (a) up to the extent of the assessments that are past due during the twelve (12) months immediately

preceding institution of an action to enforce the lien. However, notwithstanding this subsection (b) or any law to the contrary:

(A) Any foreclosure by the marina of its lien for assessments shall be subject to any prior lien encumbering the floating cabin and shall not extinguish such lien;

(B) Upon any foreclosure and sale by the holder of a security interest, the sale and foreclosure will be subject to the marina lien up to the payment priority amount set forth in this subdivision (b)(2); and

(C) Any right of foreclosure or priority of the marina shall not be transferable and shall be extinguished if assigned or transferred to a third party.

(c) If two (2) or more marinas have liens for assessments at any time on the same floating cabin, the priority of the liens shall be determined based on the date that each lien was created, with an earlier created lien having priority over a later created lien.

(d) A lien for any delinquent assessment under this section up to the priority in payment provided in subdivision (b)(2) is perfected without recording. Any other delinquent amount above the priority of payment provided in subdivision (b)(2) is perfected by filing a financing statement with the secretary of state, and shall have priority over any subsequently filed liens.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the date the lien for the assessment becomes effective.

(f) A judgment or decree in any action brought under this section may include costs and reasonable attorney's fees for the prevailing party.

(g) The marina, upon written request, shall furnish to an owner or to a holder of any security interest encumbering the floating cabin, or the owner's or holder's respective authorized agents, a written statement setting forth the amount of unpaid assessments against the floating cabin. The statement must be furnished within seven (7) days after receipt of the written request and is binding on the marina.

(h) As used in this section:

(1) "Floating cabin" means a watercraft or other floating structure:

(A) Primarily designed and used for human habitation or occupation; and

(B) Not primarily designed or used for navigation or transportation on water; and

(2) "Marina" means a marina, boat dock, dry dock, or dry storage facility.

SECTION 2. This act shall take effect July 1, 2017, the public welfare requiring it, and shall apply to charges accruing against floating cabins on or after that date.